

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

HANNAH SABATA, et al.,

Plaintiffs,

v.

**NEBRASKA DEPARTMENT OF
CORRECTIONAL SERVICES,
et al.,**

Defendants.

Case No. 4:17-CV-3107

**DEFENDANTS' MOTION TO
WITHDRAW THEIR
SUGGESTION OF MOOTNESS
AND MOTION TO DISMISS
CLAIMS OF NAMED PLAINTIFF
R.P.**

Since the date the Defendants filed their Motion to Dismiss Claims of Named Plaintiff R.P., (See Filing 58), the Defendants have learned R.P. has once again failed to abide by the conditions of his parole. The attorneys for the Defendants represent to this Court that they have learned a warrant has recently been issued for R.P.'s arrest, his current whereabouts are unknown to Parole staff, and his current confinement status is absconder. With these developments, it is all but certain that R.P.'s parole will be revoked for a second time and he will return to incarceration under the care and custody of the Nebraska Department of Correctional Services when he is located by law enforcement. (See Plaintiffs' Opposition Brief, Filing 64, at p. 5 (R.P. was previously released on parole in July 2016, but was arrested and reincarcerated after violating parole conditions)). Therefore, there will no longer be any need for this Court to rule upon the Defendants' motion and the Plaintiffs' arguments in opposition.

To be sure, R.P.'s release(s) on parole illustrate a central defect in the Plaintiffs' parole-related claims. R.P.'s release, however short-lived, fundamentally undermines the specious claim that the Defendants' parole policies are discriminatory such that the Plaintiffs are *prevented* from navigating the parole process. The same holds true for Plaintiff Sabata, who was also released on parole before committing a violation. That these Plaintiffs' misdeeds brought (or will bring) them back into NDCS's physical custody does not diminish this conclusion. Nevertheless, the Defendants acknowledge that the underlying motion, as presented, cannot succeed with R.P.'s reincarceration presumably imminent. The Defendants will revisit this issue in an appropriate future motion.

WHEREFORE, Defendants Nebraska Department of Correctional Services, Scott R. Frakes (in his official capacity), Harbans Deol (in his official capacity), Nebraska Board of Parole, and Julie Micek (in her official capacity) move this Court to withdraw their Suggestion of Mootness and Motion to Dismiss Plaintiff R.P.'s claims against them.

Submitted March 8, 2018.

**NEBRASKA DEPARTMENT OF
CORRECTIONAL SERVICES,
SCOTT FRAKES,
HARBANS DEOL,
NEBRASKA BOARD OF PAROLE, and
JULIE MICEK,
Defendants.**

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CERTIFICATE OF SERVICE

I hereby certify that on March 8, 2018, I electronically filed the foregoing document with the Clerk of the United States District Court for the District of Nebraska, causing notice of such filing to be served upon all parties registered on the CM/ECF system.

By: /s/Timothy R. Ertz
Timothy R. Ertz
Assistant Attorney General